RESTORATION AND THE PRESIDENT'S POLICY.

SPEECH

OF

HON. H. J. RAYMOND, OF NEW YORK,

ON

CHANGING THE BASIS OF REPRESENTATION,

AND IN REPLY TO

HON. S. SHELLABARGER, OF OHIO;

IN THE HOUSE OF REPRESENTATIVES, JANUARY 29, 1866.

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RESTORATION AND THE PRESIDENT'S POLICY.

The SPEAKER stated the regular order of business to be the consideration of the following joint resolution reported by the joint committee on reconstruction:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, (two thirds of both Houses concurring,) That the following article be proposed to the Legislatures of the several States as an amendment to the Constitution of the United States; which, when ratified by three fourths of the said Legislatures, shall be valid as part of said Constitution, namely:

ARTICLE —. Representatives and direct taxes shall be apportioned among the several States which may be included within this Union according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed: *Provided*, That whenever the elective franchise shall be denied or abridged in any State on account of race or color, all persons of such race or color shall be excluded from the basis of representation.

Mr. RAYMOND said:

Mr. SPEAKER: This joint resolution now under consideration, as I understand it, comes to us for our action from the joint committee appointed, at the opening of this session, for the purpose of "inquiring into the political condition of the States lately in rebellion, in order to determine whether those States are or are not entitled to representation in Congress." How much of "information" on that subject this resolution embodies the members of this House can judge as well as I can. What precise and particular connection it has with the object for which that committee was appointed is left wholly and entirely to inference.

That committee has reported, without reasons assigned, without explanation of any sort, a naked proposition to amend the Constitution of the United States. Now, sir, I am afraid that I shall fall under the censure expressed a day or two ago by the distinguished gentleman from Ohio [Mr. BINGHAM] in regard to those who are unwilling to tamper with the Constitution of the United States as it stands to-day. I acknowledge freely that I do look upon all propositions for its amendment with hesitation and distrust. I think if there is anything established in the history of this country it is that that Constitution is the most wonderful instrument ever framed by the hand of man for the government of a great nation. I think it has proved itself fully adequate to all the emergencies of peace and of war, and I think the history of this country during the last four or five years, when the great civil contest for the destruction or preservation of this Government was carried on to a triumphant close by virtue of the provisions or under the explicit permissions of that Constitution, affords the highest possible testimony that any of us could ask to the fact of its perfect adaptation to the wants and necessities of the country.

I think, especially, that in its distribution of the powers among the different departments of the Government, that Constitution has proved its wisdom, and I think this is even still more clearly shown in its distribution of powers between the General Government and the several States. That document has proved that it was made not for days or for years, but for all time; and when I foresee the vast extent of country over which this Government may at some future time be extended, I cannot but dread any change that shall touch any of its fundamental provisions, or any of the fundamental principles upon which it rests.

Still, sir, I recognize the justice and propriety of what was said by the gentleman from Ohio [Mr. BINGHAM] as to the wisdom and necessity of amendments to meet changed circumstances and an altered condition of facts. I recognize, for example, in the fact that slavery has ceased to exist in this country, the propriety of so amending the Constitution as to make it forever impossible to reëstablish slavery within the United States. The specific evil which the amendment reported by the committee is intended to remedy is also probably one which may properly demand attention. By the present Constitution, and under the state of things which prevailed but a year or two ago, the States in which slavery existed were entitled to the representation. in common with all the other States of the Union, of the whole number of free persons, together with three fifths of all other persons. The fact that they had among them four million persons who were not free gave them thus a great advantage in representation over all other sections of the Union. They had a representation for three fifths of those slaves. Those slaves have now been set free, and, as free persons, the States in which they are found are entitled, under the present provisions of the Constitution, to full representa-

tion for them. The South has thus gained, as a direct consequence of the rebellion, an additional representation for two fifths of those four millions. In other words, one million six hundred thousand persons are added to their representative population.

Now, sir, I acknowledge that to be an inequality which demands attention and a remedy, if a remedy can be found which shall not be worse than the evil itself. This committee has reported this amendment as providing that remedy. I do not suppose that it will be possible to propose any remedy which will not be open to some objections. I think, however, that this amendment is open to some of a very serious nature. One objection (which, however, applies equally to all the propositions that have been suggested) is that it changes the basis of representation from population to something else, and something less. It is, sir, a fundamental principle of free government, that the population, the inhabitants, all who are subjects of law, shall be represented in the enactment of that law and in the election of men by whom the law is to be executed, either directly by their own votes, or through the votes of others so connected with them as to afford a fair presumption that their wishes, their rights, and their interests will be consulted. This proposition departs from that principle, and is thus objectionable as a disturbance of the corner-stone on which our system of republican government—indeed all democratic institutions are supposed to rest.

Another objection is that the amendment as drawn by the committee is open to very considerable doubt as to the meaning of the words "race" and "color." Those grounds of doubt were ably and forcibly stated a few days since by the gentleman from Pennsylvania, [Mr. BROOMALL,] and need not now be repeated. They are entitled, however, to serious and careful consideration.

Another objection is that it deprives of representation the whole of any race in a State if that State should extend to a portion of that race the elective franchise. I do not think, sir, that this is in itself a wise or just provision. It introduces the anomaly of having voters for representatives who may not be themselves entitled to representation. But when I recur to the effect of that provision upon the southern States, so clearly and forcibly pointed out the other day by the distinguished gentleman from Ohio, [Mr. SCHENCK,] that it holds out to those States no encouragement to enfranchise any portion of the colored race within their borders unless they make suffrage with that race universal, I cannot help feeling that its effect would be most disastrous upon the relations of this Union to the whole southern States, and upon the welfare of those States themselves, and of the colored people within their borders.

But, sir, I do not intend to pursue this inquiry into the merits of the resolution, still less into the merits of the various amendments which have been proposed to its provisions. I cannot, in the present state of this question, regard this as a distinct proposition, standing on its merits alone. I cannot forget that it comes to us from a committee appointed for a specific object, to consider a specific subject—to report to us the political condition of the southern States with a view to their representation upon this floor. From the presumption of the case, I think I have the right to assume that this resolution relates to that general subject and is closely connected with it. I infer, moreover, from the general tone of the debate in this House on that point that this is the view taken of it all through the House; and when I regard more directly the remarks made by the distinguished gentleman from Ohio, [Mr. BINGHAM,] himself a member of the committee, as to its meaning and scope, I am not only confirmed in my belief that it does relate to that general subject, but I confess I am startled as to the scope of action that it proposes to embrace, of which this is to be the initial step. The gentleman from Ohio told us the other day, in very impressive and forcible language, that this was only the first of a series of amendments and propositions which that committee would submit for the action of the House. He regarded them all as essential to the safety of the country. He said he trembled when he thought that this whole series of propositions, which he deemed so important to the public welfare, might not be adopted by this Congress and the country at large.

Mr. BINGHAM. My statement was this: I tremble for my country if the proposition now pending be all that this House proposes to send to the people for their approval.

Mr. RAYMOND. Mr. Speaker, I desire to say, in regard to interruptions, that I shall yield cheerfully for a correction of any error into which I may fall in repeating the remarks of any gentleman; I shall cheerfully yield to any correction of any statement of fact; and I will also yield for an explanation of any point I may not make clear. Beyond this I should greatly prefer to follow the line of my remarks without interruption.

I do not understand the gentleman to make any important correction of the sentiment I understood him to express. I will adopt his explanation. He now says he trembles for his country if this were the only proposition the House should adopt. The point I wish to make is this: if this is the first of a series of propositions for amending the Constitution of the United States, so vital to the welfare of the country, which we are to assume from his remarks may be reported from that committee, we are fairly entitled to know the whole programme before we act upon any specific feature of it. How do we know what proposition will follow, if we adopt this and send it to the country? We should know the relation

of this to those which are to come after it. We should know whether this is in execution of its own terms, or whether other propositions are to follow to give it effect. We should know whether the powers of the General Government of the United States are to be so enlarged as to destroy the rights which those States now hold under the Constitution of the United States. For one, sir, I am not willing in any respect to act on this or any other similar proposition from that committee, until I know what is the rest of the schedule to be presented for our adoption.

Now, sir, I cannot help believing—it is an inference merely—that this proposition is reported from that committee as part of a scheme for reconstructing the Government and the Constitution of the United States—for reconstructing both on the basis of a distinct principle which has been over and over again announced in this House. That principle is simply this: that by the war which has been raging, and as a consequence of that war, the States which were in rebellion have ceased to have any existence as States; that they have ceased to be States of this Union; that they exist only as so much waste, unorganized, ungoverned territory; that the people who live upon that territory are simply "vanquished enemies," to be governed and disposed of by us at our sovereign will, and subject to no law but our own discretion. It is on that principle, sir, that the action proposed at this time is to be based, if it has any basis at all. That has been the tone of the debates on the subject here. That was the tone and tenor of the distinguished gentleman from Ohio, [Mr. SHELLABARGER,] who replied to some remarks which I made upon this subject a few weeks ago.

Mr. SHELLABARGER. If the gentleman is willing to yield for the purpose of correction I will say he inaccurately understands what was my meaning.

Mr. RAYMOND. Well, perhaps it would be more accurate and proper if I use the gentleman's own language. He says:

"What is before this Congress—by far the most momentous constitutional question ever here considered—I at once condense and affirm in a single sentence.

"It is under our Constitution possible to, and the late rebellion did in fact so, overthrow and usurp in the insurrectionary States the loyal State governments as that, during such usurpation, such States and their people ceased to have any of the rights or powers of government as States of this Union; and this loss of the rights and powers of government was such that the United States may and ought to assume and exercise local powers of the lost State governments, and may control the readmission of such States to their powers of government in this Union, subject to and in accordance with the obligation to 'guaranty to each State a republican form of government.'"

I accept that as the gentleman's statement of the case. The gentleman from Connecticut [Mr. DEMING] stated in so many words that the people of these lately rebellious States were now "vanquished enemies," to be dealt with politically as such, and that their lives, property, and political rights were at our absolute and sovereign disposal. And he took some credit to himself for being willing to waive in their behalf something of the *strictissimum jus* which the rule of subjugation would give us.

Now, sir, as I have already indicated, my position is the exact opposite of this. I deny *in toto* the fact of such subjugation. I do not believe that the war has given us any such power. On the contrary, I hold that these States have never ceased to be States, and have never ceased to be States in and States of the Union. And they are to-day States of the Union, and therefore entitled to all the rights conferred upon them as such by the Constitution. And we have no right and no power to exercise any authority over them which the Constitution does not confer upon us, any more than we have over the States of New England or the West.

Now, sir, I wish to say in the first place that this is sometimes spoken of as a question of mere metaphysics, or as a verbal difference, not entitled to any particular consideration in dealing with the practical relations of the subject. If I so regarded it I would not waste time in this House in its discussion. But when I see that on that distinction turns a system of policy to be pursued toward those States in restoring peace and harmony to the Union I cannot so regard it. And many of the gentlemen who themselves thus designate it have based upon that distinction, nevertheless, the whole scope of policy which they think should be pursued toward those States. I trust, therefore, that the House will forbear with me if I enter somewhat at length into an examination of the great principle upon which it is proposed that this question should rest. I can do it, perhaps, more clearly and satisfactorily than otherwise, in the form of reply to objections which have been urged against the position I have taken; and, without disrespect to any other gentlemen on this floor, I shall take the speech made by the gentleman from Ohio [Mr. SHELLABARGER] in reply to me as embodying the most compact, forcible, and most carefully prepared legal argument that has yet been made.

The gentleman from Ohio took the ground that habitual obedience to law must characterize a community in order to entitle it to be considered a State.

Mr. SHELLABARGER. I do not wish to interrupt the line of the gentleman's argument, but I would ask to put a question now which bears directly on the point upon which he now proposes to base his argument.

Mr. RAYMOND. If the gentleman will ask his question I will tell him whether it will interrupt my argument or not.

Mr. SHELLABARGER. I understood the gentleman from New York to have just said that he regards these rebel States as now in the Union to all intents and purposes as effectually and as thoroughly as any of the States of this

Union. Now, then, if that is so, I wish to ask him how this happens to be true, namely, (I read from the gentleman's speech recently made on this floor:)

"The gentleman from Ohio [Mr. FINCK] who preceded me took the ground that they had only to resume their places and their powers in the national Government—that their Representatives have only to come into this Hall and take their seats without question and without conditions of any sort. I cannot concur, sir, in this view. I do not think these States have any such rights. On the contrary, I think we have a full and perfect right to require certain conditions, in the nature of guarantees for the future, and that right rests, primarily and technically, on the surrender we may and must require at their hands. The rebellion has been defeated. A defeat always implies a surrender, and in a political sense a surrender implies more than the transfer of the arms used on the field of battle."

Mr. RAYMOND. I submit to the gentleman that what he has just read is not only not a question, nor a correction, but in the nature of a reply to my argument, and as such not warranted at this point on the score of parliamentary propriety or of personal courtesy. I have no objection at the proper time to answer the question, and I probably shall do so in the course of my remarks. And I beg to suggest to him or any other gentleman on this floor that they will restrain their impatience to reply to me until I get through, or take some other time and opportunity to discuss the question than that which belongs to me.

The last clause of the passage from my remarks which the gentleman from Ohio read furnishes a clue to the whole of them. As I said then, I believe we had a right to demand of the defeated rebels whatever might properly be embraced in the terms of a surrender. That surrender, embracing not only their arms and munitions of war but the principles on which the rebellion rested, they have made and we have accepted; and now they are entitled, with certain limitations, which I shall hereafter explain, if I am allowed to proceed in the regular course of my remarks, to the rights given to them by the Constitution, and we are particularly restrained by the Constitution, which is binding on us, from doing anything toward those States which we may not properly do toward any other State within the Union.

Now, sir, I return to the argument of the gentleman in regard to the extinction of States. He takes the ground, as I was saying, that habitual obedience to law is essential to the existence of a State in the view of public law, and he quoted Wheaton and Grotius and Burlamaqui and others to sustain that position. I have no disposition to quarrel with him on that point. I admit it. I do not think it an adequate definition of a State, but as far as it goes it is just. Habitual obedience to law is essential to a State. He takes the same ground in regard to a State in the Union, that a State to be such in this Union must be characterized by habitual obedience to the Constitution and laws of the United States, and that when this habitual obedience ceases then the State ceases to be a State of the Union. I admit that also.

Now, in regard to the first proposition, as to the continued existence of a State, I have to draw his attention to one point which he overlooked. It is not simply the fact that habitual obedience to law is essential to the existence of a State, upon which he lays stress, but he assumes that this habitual obedience must be uninterrupted, that it must never be intermitted or suspended; for if it is suspended or interrupted, the course of his argument requires him to hold that the existence of the State is ended.

He quoted from Wheaton to sustain the point he made, and he quoted correctly as far as he went; but like an adroit and skillful advocate, he stopped the quotation just where it ceased to be of service to him. If he will excuse me, I will complete it. After laying down that principle, that habitual obedience to law must characterize a State, Wheaton proceeds to say:

"But whatever be its internal constitution or form of government, or whoever may be its rulers, or even if it be distracted with anarchy, through a violent contest for the Government between different parties among the people, the State still subsists in contemplation of law, until its sovereignty is completely extinguished by the final dissolution of the social tie, or by some other cause which puts an end to the being of the State."

The interruption of habitual obedience to law, then, does not extinguish the State. The State, says Wheaton, "still subsists in the contemplation of law." We have seen examples all over the world, from the earliest date of national existence to the present time, where habitual obedience to law was suspended by a variety of causes—sometimes by anarchy, sometimes by usurpation, sometimes by civil war. All through the great contest of the French Revolution habitual obedience to law was suspended. Some English publicists—Burke, I believe, among them—contended that the social ties were actually dissolved, and that France had ceased to be a State; but she never was so regarded by England or by the coalition which attempted to restore order and the Bourbons to France. What does the gentleman say in regard to the Mexican empire to-day? There has been usurpation there; there habitual obedience to law has been suspended, and what we regard as the rightful Government of that State is a fugitive among the mountains. Does the gentleman contend that the State has ceased to exist, and that when Juarez comes back to take possession of the Government of Mexico he will find no State there—that it has perished because of the suspension of obedience to its rightful law? And yet Maximilian holds its capital, its archives, and its laws. The sovereignty resides in him and in the French army which is at his back to-day.

The gentleman applies the same principle to

the continued existence of States as States within this Union. He holds, and holds correctly, that they must be characterized by an habitual obedience to the Constitution and laws of the United States. But, sir, that obedience may be suspended. I will read from the speech of the gentleman from Ohio his own language upon this point, lest I should misrepresent his views. He said:

"No one who can read the Constitution will deny that each State in this Union must have every one of these properties [implied in habitual obedience to the Constitution and laws] before it can commence to exist in the Union; because the Constitution so declares. Now the question I consider is, whether it shall continue to be a State, in the sense that it holds the powers and rights of a State, after it has lost every property which it must have before it could commence to exist in the Union."

Mr. SHELLABARGER. I do not propose to interrupt my friend from New York, except when he misapprehends the argument to which he is replying. He now misapprehends my proposition. Those qualities to which I allude as those that must be possessed by a State, in the clause that he has read from my speech, are not those qualities that belong to an international State, but the qualities which, by our Constitution, must inhere in a State as indicated by the reading of the Constitution itself.

Mr. RAYMOND. I appreciate that distinction, but it does not in the least affect the argument. The gentleman holds that by public law habitual obedience to law must characterize a State; and I have shown that this obedience may be suspended and still the State exist. He now holds that habitual obedience to the Constitution and laws of the United States is essential to the existence of a State as within the Union, and I propose to show that in this case also that obedience may be suspended without affecting the existence of the State as a State of the Union. The analogy between the two, and between the arguments in both cases, is complete. The same principle which applies to the one applies to the other also. The gentleman asks the question which I have read from his speech. I now give him the answer by Wheaton himself from the page next to that from which the gentleman quoted. That distinguished author says:

"The habitual obedience of the members of any political society to a superior authority must have once existed in order to constitute a sovereign State. But the temporary suspension of that obedience and of that authority, in consequence of a civil war, does not necessarily extinguish the being of a State, although it may affect for a time its ordinary relations with other States."

I think that reply, made by Wheaton, and not by me, is exactly pertinent to the question as submitted by the gentleman from Ohio. It seems, therefore, on grounds of public law and on grounds of constitutional law in the United States, that habitual obedience to law may be suspended without impairing the existence of the State in the sense of public law, or as a State of the Union under the Constitution of the United States. This suspension may occur from a variety of causes. Conquest is one of them. Suppose that in a war with England, that Power should take possession of the State of Massachusetts; suppose she should plant her armed force all around her borders, take possession of her capital, and wield for a time the whole sovereign power of the State. Suppose she does that for six months, would Massachusetts thereby cease to be a State of the Union? Suppose that this occupation should be prolonged for a year, would Massachusetts then cease to be a State of this Union? Suppose that occupation should continue for two years, or three years, or four years. Whenever that usurping Power should be expelled from the State of Massachusetts, be it sooner or later, would she not then stand in her old place as one of the States of this Union? And would any action of Congress be required to restore her to it?

Mr. SHELLABARGER. Will the gentleman allow me to interrupt him at this point?

Mr. RAYMOND. I appeal to the gentleman's sense of courtesy not to interrupt me unless I am led into some misstatement of fact.

Mr. SHELLABARGER. The gentleman misapprehends entirely the proposition I made. I am very anxious that he shall answer what I did say, and not reply to something I did not say. I understood the gentleman to say that he was willing to be interrupted for the purpose of correction.

Mr. RAYMOND. I submit, sir.

Mr. SHELLABARGER. I thank the gentleman for this opportunity. Now, I am equally desirous with the gentleman to attain to truth in this regard. Now, I cited the law of nations for the purpose of establishing this proposition: that that community which had become lawless was, during the continuance of the lawlessness, no longer a member of the family of nations, and the authority read by the gentleman from New York, [Mr. RAYMOND,] which he says I omitted like an adroit lawyer to read, is in exact harmony with that idea, that the suspension of the character of a State continues during the period of lawlessness. That was all the point and purpose of my argument. There and at that point they ceased to be States for the time being. I afterward came to consider the question whether under our system those States that ceased to be States, even in the international sense, can be revived into governing States without the leave of my Government.

Let the gentleman answer what I say, and not what I do not say. What I said was that these States having been suspended in their rights and governments, the resumption of those rights cannot be made by their own volition, but that is a matter which is under the control of the political department of my Government, to wit, Congress and the Executive. There the analogy between the States of this

Union and international States fails. An international State has no superior; and when lawlessness ceases in such a State it does revive and become a State, just as Wheaton says. But under this Government the resumption of powers by a State in this Union is subject to the high control of the Government of the United States. Let the gentleman answer *that.*

Mr. RAYMOND. I thank the gentleman for his permission for me to answer "*that.*" If I understand him now—and I am surprised that I have so much difficulty in understanding him, for he is very clear in his statements as far as language goes, if not in his ideas—I understand him to say that inasmuch as these States formerly in rebellion ceased, under international law, to be States at all, they cannot be or become States in this Union without the direct consent of Congress under the Constitution of the United States. That I believe to be a correct statement of the matter, just as he has made it now.

Now, sir, I take issue with the gentleman on the question of fact. Those States did not cease to be States in the sense of international law. There never was a time when they had not government and law and obedience to law within their own borders. It does not require obedience to any particular form of law to constitute a State in the sense of public law. The government may be a monarchy to-day, a republic to-morrow, a military depotism the day after; but if there is law there the State continues to be a State. There was law and plenty of it—a great deal too much of it such as it was—in the Southern States during the whole rebellion. Why, sir, does the gentleman suppose that there was ever an hour when England, France, or any other country in the world would not have recognized each one of those rebel States as a State in the sense of public law, if they had been at liberty to do so under the explicit and peremptory prohibitions of the Government of the United States, and if they could have done so without rupturing instantly their friendly relations with that Government? No, sir, they never ceased to be States in the meaning of public law. The analogy which I drew in the case of France is perfect and complete, except that the case supposed is much stronger than that of these southern States. They were States in the sense of public international law. They were States within the contemplation of the Constitution of the United States, because the habitual obedience which was due to the Government of the United States was only suspended, not abrogated or destroyed. If they had succeeded in refusing that obedience permanently and forever, then they would have ceased to be States, not otherwise.

Mr. THAYER. Mr. Speaker, if the gentleman will allow me——

The SPEAKER. Does the gentleman from New York yield to the gentleman from Pennsylvania, [Mr. THAYER?]

Mr. RAYMOND. No, sir. I prefer that no new champion should take part in this debate. I am likely to have all I can do to take care of those already involved.

Now, sir, let me recur to the analogy presented by a case of conquest. Suppose that France or England should conquer one of the States of this Union in time of war, and should hold that State for a time; would not that be such a temporary suspension of obedience to the Constitution and laws of the United States as would not affect the existence of the State, either in the sense of public law or in the contemplation of the Constitution of the United States? Why, sir, I point gentlemen to a case which may have a bearing on this question, and which I believe has already been cited, though not upon this floor. During our war of 1812, the British took possession of one third of the territory of Maine, including the town and port of Castine, and held it for a year—held it so completely, so absolutely, that the people within those limits were held by the Supreme Court of the United States to have been absolved for the time from their allegiance to the Government of the United States. But was that district or any part of it extinguished or Congress called on to restore it to the Union when that usurpation had been withdrawn? No, sir. The action of Congress was not invoked at all. The State of which that district formed part went on as a State, and as a State of the Union, just as though the usurpation had never existed; and it was left for the judicial tribunals of the country to decide how far the relations of the individuals in that district to the United States were changed or affected by the temporary suppression of their habitual obedience to the Constitution and laws of the United States.

Sir, I have supposed a case of usurpation by a foreign Power. Let me now suppose a case of usurpation by internal commotion—by the action of internal causes. For Madison, in the Federalist, says that the provisions of the Constitution in regard to the guarantee of a republican form of government, apply to usurpations of an oligarchy within a State, as well as to usurpations of another sort. Now, sir, suppose that a party or a military leader—if it were possible that any military leader in this land could contemplate such a thing—suppose that any party or any force should usurp the government of Massachusetts or of New York, and the United States should fail to redeem its pledge to guaranty to that State a republican form of government and to expel the usurping power. If it should fail permanently, then the State would be taken by force of arms out of the Union; but suppose that it should fail to do so for a year, or for two years, or for three years, still continuing the endeavor and the strife, would

that failure destroy the existence of the State as a State of the Union? Certainly not. The very supposition affords its own answer. If the usurping power should hold *permanent* possession, then I concede that the State would cease to be a State of the Union, but not otherwise.

Now, I maintain that this is precisely what did happen in the rebel States. During the winter of 1860–61, a conspiracy against the Government of the United States existed here in this city, in this House, on this floor, aided by agents and conspirators in other sections of the country. They deliberately plotted the usurpation of the governments of the southern States, and a usurpation of the functions of the Federal Government within those States. They did all that within the knowledge and under the observation of our Government, which knew its plans and what it was proposing to do. It was the duty of our Government at that time to take due precautions against such usurpation. The distinguished chief then at the head of the Army of the United States (General Scott) recommended to the President of the United States that troops should be stationed at certain points within the proposed scene of operations, for the purpose of preventing the success of such attempted usurpation. That clearly was the duty of the Government, but the Government failed to perform its duty. The President of the United States had a theory which prevented him from interfering; and the Congress of that day refused to give him any power to interfere if he had been so disposed. It was thus to a great extent the fault of the Government of the United States that this usurpation, which was concocted here, was carried into partial and temporary execution there. Who does not believe that, if we had had a reasonable force in the State of North Carolina, that State would never have fallen into the hands of the traitors who for a time usurped its government?

The same thing may be said of almost every southern State. We all know if the United States had performed to the letter its solemn promise to guaranty to every State a republican form of government, we should have prevented the rebellion or greatly curtailed its dimensions. But we did not perform that duty. We allowed the conspiracy to ripen and gather strength. The rebels took possession of the southern States; and we were compelled, having failed to prevent it, to raise forces for their expulsion. What was the object of all our array of force except to expel the usurpers who had taken possession of every one of the southern States? What else but that were we trying to do from the beginning to the end of the struggle?

Now, sir, if an attempted usurpation does not necessarily of itself take a State out of the Union unless it proves a success, it makes no difference at all that these usurpers are able by their force, by their control of the States within their power, to bring a majority of the people over to their side. Through our failure to protect them, the people of those States were brought under the power of the usurpers and compelled to obey their authority and aid their cause. They were in the same condition that the people of Mexico are to-day under Maximilian. They had no choice in the matter. If they refused to acquiesce, their property was confiscated and they were arraigned and compelled by force of the prevailing law to join the usurping power. We waged war for four years to expel these usurpers and deliver the people from their control. Suppose we had accomplished this at the end of six months, would any one have then contended, or would any one now contend, that any one of these States was out of the Union? Suppose we had effected this result at the end of one or of two years, should we have regarded them as thus and then out of the Union? I would like the gentleman from Ohio, or any one else, at the proper time, to point out to me the precise point of time when a State gets out of the Union by the usurpation of its powers, other than the period of its final and full success.

The gentleman from Ohio attributed to me the idea, or he assumed by his argument without saying in words that I had propounded it, that, inasmuch as these States were not at any time out of the Union, they were entitled while rebel States to all the rights of constitutional States, throughout the war; and he drew a striking picture of the terrible condition in which we should have been placed if we had allowed rebel Representatives from those rebel States to take seats upon this floor during the war. I should feel some little personal humiliation if I believed that the gentleman thought so meanly of my capacity as to suppose for one moment I could have contemplated such a thing. I do hold the theory, with certain limitations not pertinent to this discussion, that once a State always a State, and at all times a State; but to be entitled to representation or power here it must be a constitutional State, owing allegiance to the Constitution and yielding obedience to the laws of the United States. In every one of those States, if there had been a constitutional government, that government would have been entitled to recognition and representation here. Those States which had such governments were so recognized and so represented here all through the war; and you had here upon this floor, admitted by your own votes, by the votes of many who sit here now, delegates from the States of the South, and States that were in rebellion. There were delegates from Louisiana, Arkansas, from Virginia, and from both Tennessee and Kentucky at the very time the rebels held armed possession of the capitals of both those States.

The gentleman from Pennsylvania [Mr. BROOMALL] also attributed to me the same

thing, and he made himself facetious over it, as he had the capacity and the right to do if he saw or fancied anything facetious in it. And not content with being facetious he became sarcastic and severe. And he reached the climax of sarcasm and severity when he referred to the coincidence between my opinions on this point and those of the Democratic gentleman from New Jersey, [Mr. ROGERS.] Well, sir, I have learned long ago that it is much better to be right with a political opponent than wrong with a professed political friend. Party names are of little consequence, especially now when they mean so little and conceal so much. And much as it may shock the gentleman, I do not hesitate to say that I would far rather be right with the gentleman from New Jersey, [Mr. ROGERS,] Democrat as he is, than to be wrong even in such distinguished company as the gentleman from Pennsylvania himself [Mr. BROOMALL] Union man as he pretends to be.

The gentleman, moreover, seems to have forgotten what also escaped the attention of the gentleman from Ohio, [Mr. SHELLABARGER,] that before any man can take a seat on this floor, or assume any office under the Federal Government, he must take an oath to support the Constitution of the United States, and must take it truly and live up to it, or bear the pains and penalties of perjury. Does he suppose for one moment that the rebel powers in those States would have sent men here who would take that oath? They themselves did not take it. They discarded it, they rejected it. And if rebel Representatives, representing rebel States, had come here they would be liable to arrest, trial, and punishment for treason. The gentleman from Pennsylvania [Mr. BROOMALL] intimated that I had been lately converted to the doctrine of the other side on this subject, and was pleased to express a real or affect surprise thereat. Even if this had been so, I should see no reason to regret it. I trust I shall never be ashamed to change my opinions on any subject, if I can get nearer the truth thereby. I have no right to assume or expect that the gentleman from Pennsylvania should be so far familiar with my political opinions, or the history of my public action, as to know the date of anything connected with either. But then he should not assume to know, on this subject or any other, more than he does know; and to prevent a repetition of his mistake on this point, if he will allow me to send him a speech made by me in Wilmington, Delaware, in the fall of 1863, more than two years ago and during the war, he will find that I held exactly the same ground then that I hold now upon this precise subject, and that I stated it in very nearly the same terms.

Now, sir, I come to another point in the remarks of the gentleman from Ohio, [Mr. SHELLABARGER.] I took the liberty of saying that if these States had gone out of the Union they must have gone at some particular time and in consequence of some specific act; and I asked for a definite statement of the specific time at which, and the specific act by which, this result had been brought about. The gentleman treated me and the House to a highly rhetorical reply. He said that he would, by way of answering the gentleman from New York as to the specific time, tell him that it was when the courts were silent; it was when they carried on war against the Government; when they became enemies of the Government; when they waged war through long, dreary years; obliterated from their State constitutions every vestige of recognition of our Government; discarded all official oaths, and took in their places oaths to support the government of our enemy; it was when they disregarded all the laws of war, "when they carved the bones of your martyrs into ornaments, and drank from goblets made of their skulls."

Well, sir, that is very rhetorical, and there is a great deal more of it. It is very fervid, very touching, and very effective. But, sir, he will excuse me for saying that it is not an answer to my question. It is simply and solely an evasion of it; and he will excuse me for asking his attention to it again. I take it, that, being a lawyer, he knows very well that the relation of the State to the Federal Government at any time is a question of law, of constitutional law. He will concede that under the law of the Constitution a State, at any particular time, either is or is not a member of the Union. It is very easy to tell when States became members of this Union, and by what specific act. We all know, for example, that the Constitution was adopted on the 17th of September, 1787, and that it went into effect on the 4th of March, 1789. At that time neither North Carolina nor Rhode Island had ratified the Constitution. They were alien States, decided to be such by the Supreme Court of the United States; so that goods that were imported from those States into the United States were taxed by our laws as goods imported from other foreign countries. They were foreign States far more essentially and truly than any one can claim any of the rebel States to have been or to be. And yet on the 21st of November, 1789, North Carolina ratified the Constitution, and thus became, on that day and by that act, a member of the Union; and Rhode Island, on the 29th of May, 1790, more than a year after the Constitution had been adopted by enough States to give it validity, and after the Union was thus formed, became also a member of that Union at that specific time and by that specific act. It is thus very easy to say precisely when and precisely how any State became a member of the Union.

Now, I take it to be equally true that if a State ceases to be a member of the Union she must so cease at some specific time and by some specific act. On any certain day, say the 4th of July, 1861, South Carolina either was or was not a member of the Union, and so of any other

day. It is asserted that she is not a member now; and I ask for the specific time when she thus ceased to be a member of the Union. She adopted her ordinance of secession on the 17th of November, 1860. Was she a member on the day before, and had she ceased to be a member on the day after, that act? This is the question I asked; but I got no answer. If she did thus cease, then it was the ordinance of secession that terminated her membership. But I did not understand the gentleman from Ohio to maintain that theory in distinct terms, and I presume he does not hold it.

Mr. SHELLABARGER. Do you desire an answer?

Mr. RAYMOND. If I have misstated the gentleman's position, I do; otherwise I do not.

Mr. SHELLABARGER. What was the gentleman's statement? I did not hear it.

Mr. RAYMOND. I do not suppose I have misrepresented the gentleman. I say that on the day before South Carolina passed her ordinance of secession she was a member of the Union by general consent. Now, was she a member the day after she passed it? If she was not, then the moment of its passage was the specific time when she ceased to be a member of the Union. I say I do not understand the gentleman to maintain that position.

Mr. SHELLABARGER. I do not maintain that position.

Mr. RAYMOND. Very well; so I supposed. Then I proceed to inquire still further, if it was not that, *what was it*, that accomplished this result which the gentleman maintains was accomplished by something or other?

Mr. SHELLABARGER. I will not interrupt the gentleman unless he desires an answer to the question he has just propounded.

Mr. RAYMOND. No, sir, I do not.

Mr. SHELLABARGER. Then I will not interrupt him.

Mr. RAYMOND. I am obliged to the gentleman for his forbearance. I ascertain from his admission that he does not hold that the passage of ordinances of secession effected a severance of these States from the United States. I proceed, then, to inquire what was it that did effect it? Was it the fact that they made war? Why, sir, the fact of making war is nothing in itself. They may make war, but that is a game that two can play at, and unless they make successful war, the fact of their making war has no relevancy at all, and can work no change in their constitutional relations. They became members of the Union by their ratification of the Constitution and by the acceptance of that ratification, and they cannot annul either of those acts by the fact of making war. Is it the length of the war, its duration? Would they have been out of the Union if they had made three months' war, or six months' war, or one years' war, or two years' war? If it was the length of the war that accomplished the result, pray what is the length essential to its accomplishment? Was it the mode of making war? Was it the fact that they "carved the bones of our martyred heroes into ornaments" that took them out of the Union? Of course no one will pretend that. If, then, it was neither the fact of their making war, nor the duration of the war, nor the mode in which they carried it on, what is there left but a successful result of the war which could possibly accomplish the object at which they aimed? If the war had been successful, then, and then only, would they have accomplished their purpose of departing from the Union.

Now, I wish to refer for a moment, and I will be very brief, to the prize cases so often quoted to sustain the position that the citizens of the rebel States were enemies during the war, and are vanquished enemies now, in a political sense, for in any other sense it has no relevancy whatever to the questions now at issue. I understood the gentleman from Connecticut, [Mr. DEMING,] and various other gentlemen who have spoken on this subject, to take the ground that inasmuch as the Supreme Court has decided them to be public enemies, therefore they have no rights under the Constitution of the United States, but are subject to our absolute will and disposal. Now, I wish to repeat what I said when I spoke before, that the point which was decided by the Supreme Court in the prize cases was simply this: that, during the war, for the purposes of the war, to define the mode in which and the law by which the war could and should be carried on, all the inhabitants of the southern States were public enemies, in this, that property belonging to persons living within the enemy's lines might be seized as enemy's property. It was not held that they would continue public enemies after the war closed, or that they were enemies in any political sense whatever.

Now, sir, there is one single sentence, and it is a brief one, in the decision of the Supreme Court which will show that I make that distinction not without warrant. The court distinctly cautions us against falling into the error of supposing that the term "enemy" was used in a political sense, or in the sense of the common law. Justice Grier in his opinion says:

"But in defining the term 'enemy's property,' we will be led into error if we refer to Fleta and Lord Coke for their definition of the word 'enemy.' It is a technical phrase peculiar to prize courts, and depends upon principles of public policy as distinguished from common law."

Now, in every part of that decision this distinction must be borne in mind, else we shall fall into the precise error against which we are warned by the very decision of the court itself. I repeat there is not one sentence, not one word, not one syllable, in that decision which will give the slightest countenance to the idea that the court decided that the people of those States are still enemies, now the war is closed, or that

they have ever been political enemies in the sense in which that term is used upon this floor. The object, and the only object of the court was to decide what was the *status* of property belonging to public enemies, so far as the right of capture was concerned. And the decision on that point was that we had the right to capture property found at sea belonging to men living within the enemies' lines; not because it belonged to disloyal persons, but because it was within reach of the enemy and might be used against us by them in the war. And that is the reason, as I understand it, which controls the whole law upon that technical subject.

I hold in my hand a summary of the decision of the court, prepared by Richard H. Dana, jr., of Boston, who is known there and elsewhere as one of the ablest lawyers, and one of the soundest publicists in that State, which abounds in both. He was counsel in one of these cases, and I may add here, because with some it might give the greater weight to his authority, that he is to-day one of the most strenuous advocates of the adoption of stringent measures in regard to the southern States.

[Here the hammer fell.]

Mr. JULIAN obtained the floor.

Mr. DAVIS. I move that the time of my colleague [Mr. RAYMOND] be extended so that he can conclude his remarks.

Mr. RAYMOND. I would be greatly indebted to the House if I may be permitted to conclude what I have to say.

No objection was made.

Mr. RAYMOND. Mr. Dana says on this subject:

"In closing, I offer the following synopsis of what I understand the court did and did not decide.

"What the court did not decide:

"1. The court did not decide that the passing of the ordinances of secession made the territory of the insurgent States enemy's territory, or its inhabitants alien enemies.

"2. The court did not decide that the passing of the secession ordinances terminated, or in any way affected, the legal relations of the insurgent States as bodies-politic with the General Government, or the political relations of their inhabitants with the General Government or with their respective States.

"3. The court decided absolutely nothing as to the effect of the passing of the secession ordinances on the civil or political relations of the inhabitants of the insurgent States with the General Government or with their respective States, or on the relations of the insurgent States, as bodies-politic, with the General Government.

"4. The court did not decide that the inhabitants of the seceding States are alien enemies at all, or that the territory of those States is enemy's territory.

"What the court did decide:

"1. That in case of domestic war the Government of the United States may, at its option, use the powers and rights known to the international laws of war as blockade and capture of enemy's property at sea.

"2. That to determine whether property found at sea is 'enemy's property,' within the meaning of the law of prize, the same tests may be applied in domestic as in international wars.

"3. One of those tests is that the owner of the property so found has his domicile and residence in a place of which the enemy has a certain kind and degree of possession.

"4. Richmond, Virginia, was at the time of the capture and condemnation of those vessels under such possession and control of an organized, hostile, belligerent power, as to render it indisputably 'enemy's territory,' within the strictest definitions known to the laws of war.

"5. That it was immaterial how that organized power came into existence, whether by the use of State machinery or otherwise, or what its political claims or assumptions are, or whether it is composed of rebel citizens, or invading aliens, or both, or whether it professes to recognize State lines. It is enough for the court that it is waging war, and so recognized by the political department of the General Government, and has the requisite possession of the region in which the owner of the property resides.

"6. That a court of prize in such case decides independently of all questions as to the political relations of the owner, or of the place of his domicile, with the Government of the capturing Power."

So much for that point, and I will not dwell further upon it. But I think it shows clearly that the Supreme Court gave no countenance by its decision to the doctrine presented here, that the inhabitants of these States, having once been belligerents, and declared to be enemies within the technical meaning of the law of prize, are to-day political enemies, and thus subject to be disposed of by us under no restraints but our absolute will and pleasure as their conquerors.

Mr. STEVENS. Did not Mr. Dana confine his remarks to the mere effect of passing the ordinance of secession?

Mr. RAYMOND. In other portions of this *précis* Mr. Dana extends the consideration of the subject generally, and says that the court did not decide at all that these people were political enemies.

It is claimed here that the rebel States have forfeited their rights under the Constitution; and that on the ground of forfeiture they have ceased to have any rights under the Constitution of the United States. As I said the other day, that is a novel doctrine to me. I do not know how States can thus forfeit their rights unless they can discard their obligations also. They certainly cannot do it outside of the Constitution, and there is no provision in the Constitution under which they can do it. They have not done it by the law of nations. We have not been waging a war of conquest against them, and have not achieved any such subjugation as gives us such power or puts them absolutely at our mercy.

As I understand it, we have acquired no greater power over them by our victory over the rebellion than we had before the rebellion broke out. We put down the rebellion, we crushed the usurpation, we expelled or overpowered the usurpers, we cleared the rebel States of all authority and all force that resisted and rendered impossible the execution of the laws of the United States. When that was done we were done, and the States remained as they were before. We certainly did not conquer them in any sense of subjugation to anything else than the Constitution and law of the United States.

Moreover I find in the Constitution no pro-

vision for the forfeiture of State rights. I find there no provision for punishing States. I find provision for punishing individuals for treason, but none for punishing States. I made in this connection a remark a few days ago, that the Constitution generally dealt with individuals and not with States; that there were but few cases in which it dealt with States at all.

The gentleman from Ohio, [Mr. SHELLABARGER,] in somewhat eager haste, I thought, to avail himself of what he might well enough have supposed to be a mere *lapsus* on my part in the use of language, paraded before the House an array of about fifty cases in which the Constitution does deal directly with States; and he asserted in broad terms that the "ability to read the English language" ought to have preserved me from making such a mistake as that. Well, sir, I did not take that in ill part at all. It was a part of the gentleman's rhetoric. He had a perfect right to resort to it. It was not the only case in which he did so, though, perhaps, it was the only case in which he did it with so direct a personal application to myself.

But, sir, I repeat, with a full knowledge of the word as I used it then, that so far as inflicting punishment is concerned the Constitution deals with individuals, and not with States. It does deny the right of States to do certain things—to make treaties, issue letters of marque and reprisal, &c.; but it provides no punishment for States if they violate those injunctions, except the simple penalty of rendering null and void everything that they thus do in violation of those prohibitions. I knew, when I made that statement, that I was not originating any new doctrine. I remembered that Daniel Webster, in one of his able and striking replies to Mr. Calhoun, took the same ground—that the Constitution deals mainly with States; and I knew that in that case he quoted from older and perhaps higher authorities, if there could be higher authority than his own upon that or any other point of constitutional law. I remembered that Oliver Ellsworth, in urging upon Connecticut the adoption of the Constitution, declared explicitly that its great peculiarity was that it dealt with individuals and not with States. I remembered that Mr. Samuel Johnson, the famous lawyer of the same State, made substantially the same statement. And I remembered also that Daniel Webster quoted them both when he concurred in their opinion, and said that—

> "The Constitution was adopted that there might be a Government which should act directly on individuals without borrowing aid from the State governments."

I thought, sir, that I should not be in very bad company when I propounded so simple a proposition; and I think to-day that if the "ability to read the English language" should have protected me from falling into error, it should have protected them also.

Mr. SHELLABARGER. Will the gentleman yield to me for a moment?

Mr. RAYMOND. Yes, sir.

Mr. SHELLABARGER. The gentleman seems to charge me (though I do not think he intended it) with an intentional misunderstanding of his remarks in regard to the Constitution dealing with States. Now, sir, if I fell into a misapprehension as to his meaning on that point, it was his fault. If I fell into a misapprehension, it was because, in connection with his statement that the Constitution did not deal with States, he said that it did not do it "except in one or two instances, such as elections of members of Congress and the election of electors of President and Vice President," showing that he was not speaking of the Constitution dealing with individuals in the punishment of crime or in the enforcement of laws, but that he was speaking of the Constitution dealing with States in the political sense which I attributed to him, because he instanced those two cases.

Mr. RAYMOND. I admit, Mr. Speaker, that I was less guarded than I might have been in the language which I used; perhaps it was susceptible of a broader interpretation than I meant to give it. When I said that the Constitution deals with individuals rather than States, I meant to confine it, as the connection shows—though perhaps I should have done so more explicitly than I did—to the matter of punishments.

Mr. SHELLABARGER. The gentleman, I trust, will pardon me, if I make one additional suggestion. I agree to the proposition which the gentleman states, that, in all matters of the enforcement of the laws under the Constitution of the United States, the Constitution does act on individuals. That has been again and again affirmed by the Supreme Court of the United States.

Mr. RAYMOND. That was all, sir, I designed to say on that point.

Now, having shown, it seems to me, by reasoning, with more or less force and conclusiveness, that we have no right to deal with the States lately in rebellion otherwise than as we might have dealt with them before the rebellion began. I wish to show that the action of the departments, executive, legislative, and judicial, confirms that view. That action proceeds from first to last upon the supposition they were States in the Union when the rebellion broke out; that they continued to be States of the Union during the war; and that they are States in the Union now that the war is over and the rebellion crushed. I do not wish to detain the House by referring in detail to the various acts by which I can sustain these views. It is enough when I refer in general terms to the proclamations of the Executive, and his declarations, both public and private. The first inaugural delivered by the President of the United States, Mr. Lincoln, on the 4th of March, 1861, takes the same po-

sition, and is predicated upon this position, that all that he had to do was to execute the laws of the Union, not to wage war against a State. He said:

"It follows that no State upon its own mere motion can lawfully get out of the Union; that resolves and ordinances to that effect are legally void; and that acts of violence within any State or States against the authority of the United States are insurrectionary or revolutionary, according to circumstances. I consider, therefore, that in view of the Constitution and laws the Union is unbroken, and to the extent of my ability I shall take care, as the Constitution itself expressly enjoins upon me, that the laws of the Union be faithfully executed in all the States."

And in the proclamation of April 15, calling out the first body of troops, he declared that—

"Whereas the laws of the United States have been for some time past, and are now, opposed, and the execution thereof obstructed in the States of South Carolina, Georgia, Alabama, Florida, Mississippi, Louisiana, and Texas by combinations too powerful to be suppressed by the ordinary course of judicial proceedings,"—

he would call for seventy-five thousand men to suppress those combinations and enable him to execute the laws. This, too, is the tone and teaching of all the diplomatic correspondence of the Government carried on through the Secretary of State. England was warned from the very first that any recognition by her of these States as being out of the Union would be resented as a cause of war; and Mr. Seward said to Mr. Adams that if England recognized the southern States she must prepare to be their ally. So Mr. Lincoln, in his letter to Mr. Greeley, published at the time, adopted the same idea. So in his letter to Fernando Wood of December 12, 1862, he uses these distinct terms:

"Understanding the phrase 'the southern States would send Representatives to Congress' to be substantially the same as that the people of the southern States would cease resistance and would reinaugurate, submit to, and maintain the national authority within the limits of such States under the Constitution of the United States, I say that in such case the war would cease on the part of the United States, and that if within a reasonable time a full and general amnesty were necessary, to such end it would not be withheld."

So in every declaration of the President; but I will not keep the House by reading more. The House will excuse me for reading as one more proof a passage from the reply to the French proposal for referring the whole subject to a commission. Mr. Seward in that reply says:

"The Congress of the United States furnishes a constitutional forum for debates between the alienated parties. Senators and Representatives from the loyal portion of the people are there already fully empowered to confer; and seats also are vacant and inviting Senators and Representatives from the discontented party who may be constitutionally sent there from the States involved in the insurrection."

That declaration received the approval of the President, and expressed the views of the executive department of the Government.

Now, so much for the executive department of the Government. I find also upon the statute-book laws of Congress all based upon the same idea; laws imposing direct taxes, frequently referred to in these debates. In August, 1861, that law was passed apportioning their share of direct taxes to each of the States then in rebellion, naming them and recognizing them most distinctly and explicitly as States of the Union; and those taxes were paid, or when paid will be paid, by virtue of that act of Congress. So with the apportionment of representation. The act passed March 4, 1862, which did not take effect by its terms until March 4, 1863, gave to each of the southern States its proportion of representation upon this floor. It thus acknowledged the right of representation in Congress of every one of those States, and by the most solemn action declared them to be States of the Union and in the Union even while in open rebellion and war. I could read from other laws passed during the war and show that they all imply, more or less directly, precisely the same thing. I find moreover from time to time distinct declarations by Congress and by this House of the object and scope of the war; I find that the object of the war is in every instance declared to be to defend and preserve the Union with "all the dignity, equality, and rights of the several States unimpaired." I find that one resolution defining the objects for which and for which alone the war was waged, and specifying as one of them the preservation of the rights of the States unimpaired, passed this House after the war had begun in the summer of 1861; and I find recorded as having voted for it nearly all who were then and who are now members of the House on the Union side, and many others. I find the distinguished gentleman who is now the Speaker of the House, [Mr. COLFAX;] I find the gentleman from Pennsylvania, [Mr. KELLEY;] I find the gentleman from Ohio [Mr. SHELLABARGER] voting that the object of the war was to preserve the rights of the States unimpaired, and that when that object was attained the war should cease.

Mr. SHELLABARGER. Will the gentleman yield a moment?

Mr. RAYMOND. Yes, sir.

Mr. SHELLABARGER. I desire to say that I stood upon that position and I still stand upon it, and it is in order that the rights of the States may be preserved unimpaired that we have raised the joint committee of fifteen.

Mr. RAYMOND. If I understand the gentleman, he holds that the rights of the States are now not only impaired but destroyed, and that they are not in existence now. Now, as the object of the war was to preserve those rights unimpaired, the war must have failed to accomplish the object for which, by the common consent and positive declarations of Congress, it was carried on. What, then, did it accomplish, if not the object for which it was waged? I hold that the war was not a failure but a success; that it did achieve its declared object; that it suppressed the rebellion, and by so doing "main-

tained the integrity of the Union and preserved the rights of all the States unimpaired."

Well, sir, the gentleman from Pennsylvania, [Mr. STEVENS,] although I have heard him complimented (and he will excuse me for saying I consider it a very questionable compliment) for having always held that the States were out of the Union, has not, I believe, always held it or always desired that others should, for I find him introducing a resolution in this House on the 4th of December, 1862, declaring—

"That if any person in the employment of the United States, in either the legislative or executive branch, should propose to make peace, or should accept or advise the acceptance of any such proposition on any other basis than the integrity and entire unity of the United States and their Territories as they existed at the time of the rebellion, he will be guilty of a high crime."

I do not propose to be guilty of that "high crime."

And now, with one more authority on this subject, I will drop it; and that shall be the authority of the present Chief Justice of the United States on the question whether the States are in the Union or not. In a discourse which Chief Justice Chase delivered about a year ago at Dartmouth college, he said:

"It is my opinion that the States remain States." * * * * "And the rebel governments of the southern States have been destroyed. All the machinery of these governments has come to an end; and now, holding as I do that these States remain States, the second process of reorganization is that the governments now revert into the hands of the southern people. They are to rebuild the governments of these States."

I leave this opinion to speak for itself, and with that I leave the discussion, already too much extended, of this part of the subject.

I have thus endeavored to show—with how much or how little success I leave to the House to judge—that the States lately in rebellion are still States of the Union; that their people are not "vanquished enemies" in any political sense, or in any sense which subjects them to be disposed of according to our political discretion; that they are still within the jurisdiction and protection of the Constitution; that they enjoy all the rights under that Constitution which they had before, that they are bound to perform all the duties which the Constitution devolves upon them; and that we are bound by that Constitution in our dealings with them, and have no right to do anything in regard to them which the Constitution does not permit and empower us to do. We have taken a solemn oath to protect and maintain the Constitution of the United States. By the tenth amendment of that instrument all the rights not conferred upon the General Government are retained by the States or by the people thereof. I submit that it is our duty to fulfill the injunctions of the Constitution in that respect as in any other, and toward those States as toward all others. Whether members may be disposed to concede it as a right or not, or to grant it practically even if they do concede it in theory, we have no right, acting under the solemn obligation of our oaths, to set the Constitution of the United States or its authority aside for a single moment.

Having thus, in a somewhat desultory manner, and I am sure very tediously, discussed this question, I will come to a more practical application of the principles I have endeavored to establish. The contest ended in April or May of last spring. The war, which was to crush the rebellion, restore the integrity of the Union, and maintain the rights of the States and Territories as they existed before the rebellion, came to an end, having accomplished its object. The President had carried on the war by virtue of his power as chief Executive of the United States, and as Commander-in-Chief of its armies and navies. By the Constitution, article second, section first, the executive power is vested in the President alone. By the third section of the same article it is declared that he shall take care that the laws are faithfully executed. He carried on the war for that purpose by the power directly conferred upon him by Congress. We often hear it said in regard to the southern States, that if not out of the Union their practical relations to the Government have been suspended. Now, that is true unquestionably. But what is the precise meaning of that language? In what phrase known to the Constitution can the fact be clothed? Is it anything else than this: that in consequence of their condition the laws of the United States could not be executed within those States, and it was necessary so to change that condition as to render their execution possible?

Well, the war came to an end. The President found this state of things existing: the authority which had opposed the execution of the laws had been destroyed; the usurpation had been expelled; the laws were there; your statute-books were full of laws applicable to all these States; there was no lack of laws; the only lack was of agencies and agents for their execution; the machinery of the Government stood still. There was, for example, a law upon your statute-book imposing a tariff of duties on goods imported into southern ports; there was nobody there to collect them. There was a law imposing internal revenue taxes all through those States, and there was no machinery by which they could be collected. There was a law upon your statute-book assigning to those States, by districts, members of Congress; but there were no voters duly qualified under the Constitution of the United States to elect them, and no Legislatures to direct and regulate the manner of their election.

Now, sir, what did the President do under these circumstances? Congress was not in session, and, moreover, it was an executive duty that devolved upon him. He went forward to put the States in a condition to enable him to execute the laws. He proceeded to put the States in such a condition that he could start

the machinery of government, so that the laws of the United States might be faithfully executed by him within the limits and jurisdiction of those States.

Mr. STEVENS. I wish to ask the gentleman a question merely for information. What law of Congress was the President executing when he ordered conventions in the States and told them what kind of constitutions to frame?

Mr. RAYMOND. I am quite incredulous of the gentleman's statement that he wishes for information. He seldom needs information on this or any other subject. I am quite sure he has as much of it as I have, though he may not take precisely the same view of the legal bearing of the information in his possession as I should take. However, I will endeavor, in due course of time, to give him what little information I have upon that particular point.

As I have said, it was the duty of the President to execute the existing laws. When Congress shall make new laws for him to execute, he will undoubtedly execute them; but these laws were there, in all the plenitude of their sovereign authority; they stood upon the statute-book, and it was for him to execute them. He thought it his duty so to do. There were a variety of ways open to him by which to provide for their execution, of which he has told us in his annual message. He might have done it by the direct exercise of military power, but that would have involved various evils which he has pointed out, and which are acknowledged to be sufficient. He chose to execute them by virtue of his combined and conjoint authority as Commander-in-Chief of the Army and Navy, and also as the chief Executive of the United States. He followed the precedent set by his predecessor and commenced by him without objection to its fundamental principle on the part of Congress. The first thing he did necessarily was to relieve the great body of the people from their disabilities, so that they could act as loyal and qualified electors of those States; and there is no doubt that he had the power to do this, for it is expressly conferred upon him by the Constitution. There is no doubt, moreover, that it was absolutely necessary as the first step toward the execution of the laws. His predecessor had done the same thing by issuing a proclamation extending amnesty to the people of the southern States upon certain conditions. He thus had a basis for a reorganization of the machinery of Government. He then appointed provisional governors by virtue of his authority as Commander-in-Chief of the Army and Navy, under whose direction and guidance, as representatives of the national authority, this process of restoration might proceed.

Now, I know the question has been raised—and perhaps it is not quite clear and free from doubt—as to the precise legal authority he had to take this specific step; but I believe it is a principle well established in law that the war powers do not necessarily cease when the actual operations of the war shall have ended; and that the powers of the Commander-in-Chief extend beyond the time when the hostile armies in the field are disabled and destroyed. It is a period when war is not raging, but is not yet ended—a period known to lawyers and courts as *non flagrante sed nondum cessante bello*. And it has been held in the highest English courts and in all the courts where the question has come up, that the Commander-in-Chief may exercise the authority properly belonging to him as Commander-in-Chief even after the actual war is over. President Johnson appointed provisional governors of these States as his agents, not in the form or under the name of military governors, though that would not have changed the nature of their duties, because he himself had the same duties confided to him when made military governor of Tennessee by President Lincoln. But he appointed them as his agents to set in motion the machinery of government; and a part of that machinery was the calling of conventions and of Legislatures which should act for the States, and aid by necessary legislation in reëstablishing the relations of the States with the Federal Government. He prescribed the terms on which citizens should be allowed to vote for members of the Legislature and for delegates to the convention. He did that because he had an undoubted right to see that power was no longer usurped, and that there should be no voting but loyal and legal voting there. So he went on, by one step after another, advising the Legislatures, counseling them to abolish slavery, not only by their own laws, but by adopting the constitutional amendment, recommending them to repudiate the rebel debt, and also to put upon their own constitutional records a solemn abandonment of the doctrine of secession. Without going further into the details of the steps taken by the President, I will merely say that he proceeded steadily and successfully to restore authority in those States, to put in motion the machinery of their governments, and through that machinery to take care, as he was solemnly sworn to do, that the laws of Congress were "faithfully executed."

I do not know that there was any special call for the interposition of Congress upon that subject. In my judgment the proper function of Congress does not come in until a later stage of the proceedings. The decision of the Supreme Court, in the case of the Dorr rebellion in the State of Rhode Island, has been quoted here to show that it was for Congress to decide when a republican form of government, which they are bound to guaranty, does exist in a State. I have not that decision by me at this time. But I think if gentlemen will read it with special regard for its language, and especially for the qualifying clauses in it, they will discover that the decision was to this effect: that it was for Congress to decide what was a republican form

of government by deciding upon the admission of members coming from that government, or elected under it. This is the mode and scope of the action of Congress upon this point, and having decided it, the members thus admitted are members of Congress, and laws in the enactment of which they take part are binding upon all the departments of the Government. As I understand it, that is the extent to which upon that point that decision went.

Now, what is the condition of these States to-day? They are in the full exercise of their functions of self-government. Our laws relating to them exist upon our statute-books, and they are duly executed within their limits. Taxes are collected from the people of those States. The vessels that go into their ports pay duties according to our laws. Not only has self-government been established throughout those States, but they are to-day, whatever may have been the case during the war, now in the Union, and they can only be got out of the Union by expulsion. It is possible that this Congress may attempt to expel them, but I do not think it will. It can declare them not to be in the Union, but it must be by a positive act of deprivation if it actually gets them out from the jurisdiction and protection of the Constitution; and Congress is not empowered to perform any such act.

Now, all that remains to complete the restoration of their practical relations with the national Government is the admission of representatives from those States into the two Houses of Congress: and that is for Congress to do. That is purely, solely, and exclusively confided to the power of Congress. The President has nothing to do with that question. And all that we have now to decide is, upon what principles shall that question be settled? I say with regard to that matter, as I have said in regard to every other question connected with our relations to those States, that we must decide it on the principles of the Constitution. We have no right to go beyond that. The fifth section of the first article of the Constitution says:

"Each House shall be the judge of the elections, returns, and qualifications of its own members."

It is for this House to decide upon the qualifications of members who may present themselves here for admission, and it has the right to select its own test to determine that question of qualification in its own way and by its own forms. It has a right to declare that disloyalty, evinced by active hostility against the United States, shall be a disqualification for a seat on this floor, and it has already done so.

There is another point. As Representatives are chosen by districts and not by States, I maintain that this House is bound to consider the case of each separate district by itself, as a district; by which I mean that if a member presents himself here from a particular district of the State of Georgia we can inquire into his qualifications for occupying a seat upon this floor without regard to the character of other Representatives from that State, or of the State itself. If he is a disloyal man we can exclude him, and decide that his district, having sent here a disqualified man as a Representative, is not entitled to representation until it sends one who is qualified; and if the adjoining district sends a man who is qualified, we may and should admit him, thus deciding the matter by districts and not by States. The Senate, of course, will act for itself on the question of admitting Senators, and must, of necessity, act by States.

Mr. STEVENS. The gentleman will pardon me for interrupting him, but I would like to understand from him whether he holds that this House can make a law changing the qualifications which the Constitution prescribes for a member of Congress, or whether he holds that it must be done by both branches of Congress jointly.

Mr. RAYMOND. I do not think that either this House or both branches of Congress can change the provisions of the Constitution in that respect or in any other.

Mr. STEVENS. I desire the gentleman to state whether, in his view, we can, either by our own action or the joint action of both Houses, make a law requiring other qualifications for membership than those designated in the Constitution.

Mr. RAYMOND. We cannot pass any law whatever except by the joint action of the two Houses, and we cannot by joint action pass any valid law which shall contravene the provisions of the Constitution; but so far as concerns the admission of members to this floor, we ourselves are the absolute judges. "Each House shall be the judge of the elections, returns, and qualifications of its own members." There is the source from which we get authority to judge at all, and that expressly assigns authority on this subject to each House. In acting on this subject, we must undoubtedly abide by the Constitution, and must demand that any person claiming a seat as a Representative shall satisfy the qualifications prescribed by the Constitution.

Mr. STEVENS. I desire to ask the gentleman whether, in his opinion, a test oath, being an addition to the qualifications prescribed by the Constitution, can lawfully be required of persons presenting themselves for admission as Representatives.

Mr. RAYMOND. I think that we can add such an oath as a test of qualification, if we choose. The Constitution does not prohibit us from requiring any additional test of qualification which we may deem essential.

Now, sir, it is said that by the course of procedure which I suggest a State may be represented partially in one House and not at all in the other. Well, sir, why not? If a particular district in a certain State is entitled to representation by virtue of its loyalty, and it sends

here a loyal man as its Representative, that man should be admitted, even though all the rest of the State should be disloyal, and thus disqualified from sending a proper man as a representative in the other branch of Congress. I see no objection to that in point of constitutional law, and I see some advantages in point of policy. This is, it occurs to me, the only way in which we can have any representation of the loyal men of the southern States, or do them any kind of justice. We should not judge them sweepingly, classing them with rebels and traitors, and declaring that because some in the State are not entitled to representation, none can have it. Moreover, it would give us some relief and promise us more in future from the great evil which has afflicted the politics of this country for some years past—I mean the evil of sectionalism. We can form relations with loyal men in portions of the South. They need not come here in solid phalanx, adhering, as a matter of course or necessity, to one political party, and to one line of national policy, and taking no part in the general interests of the country, except so far as their relations to one particular party incline them to do so.

Now, sir, it is objected that it is unsafe to admit upon this floor members from the States whose people were lately engaged in rebellion, because those members may vote in a way to destroy or impair some of the permanent interests of the country, or in a way which conflicts with the opinions which many of us hold to be the only safe opinions on which the Government can be conducted. Well, sir, if they are loyal men, (and I do not wish to meet any other here,) they will not vote in a disloyal manner. But, sir, I do not see what right we have to make any point like that. We have no right to canvass how men shall vote before we admit them to seats upon this floor. If they have the right at all, they hold it wholly independent of that consideration. Moreover, I venture to say we need to-day, more than we need anything else, Representetives, intelligent Representatives, loyal Representatives from the southern States here upon this floor, for our own information and guidance on subjects we are daily called upon to canvass and decide.

Why, sir, that is the mode by which, in the view of the Constitution, Congress should become enlightened as to the action it should take. It is to act upon information furnished by Representatives from the different States. Look at the means we have to resort to now, for lack of such representation, to procure such information. We have to rely upon newspaper reports, upon chance letters of correspondents. We hear read before Congress, in one branch or the other, copious extracts from anonymons letters. We call to our aid agents sent South, as my friend from Connecticut [Mr. DEMING] said, to inspect the "southern *animus*." This is a roundabout and most unsatisfactory way of procuring information to serve as a basis of public action. Each agent will bring from there what he takes there; he will see what he went to see—that and nothing more. Is information thus loosely gathered from irresponsible sources a proper guide for legislation? Is that proper ground on which to act? We should gain immensely in knowledge of the actual condition of the States if we had by our side loyal, intelligent southern men representing loyal districts in the southern States.

Now, sir, we have not gone to work to decide upon the admission of members in this way. We have not taken this constitutional mode of considering the claims of southern Representatives to seats on this floor. Instead of acting in accordance with the provisions of the Constitution, instead of acting ourselves at all, we have abdicated that high function and handed it over to a joint committee of fifteen—a committee which sits with closed doors, which deliberates in secret, which shuts itself out from the knowledge and observation of Congress, and which does not even deign to give us the information it was appointed to collect, and on which we are to base our action—but which sends its rescripts into this House and demands their ratification without reasons and without facts, before the going down of the sun! Is that the constitutional mode of acting on this great question? Is it a mode which can satisfy the consciences and patriotic convictions of any man on this floor?

This resolution embodies an amendment to the Constitution which comes from that committee. It is sent here, and the prompt, instant action of the House is demanded upon it. Not a reason came to us from the committee for its adoption, not a statement even of any exigency which required it. I rejoice that the sense of the House revolted from the monstrous outrage of deciding so great a question, one touching so nearly the fundamental principles of our Government, on so small a basis. It demanded debate; and I shall be much disappointed if from the able debates of the past few days the House has not received information and criticism of value in aiding it to form just opinions and take proper action upon the subject.

I think, sir, we have a right to ask that committee for the entire programme on which they propose to reconstruct the Government of the United States before we adopt any of its parts. We may have this amendment changing the basis of representation sent to us to-day, and to-morrow we may have another virtually consolidating the national Government and substantially extinguishing the rights which belong to the States under the Constitution. I will not assume that this is the direction in which the committee is looking for the reconstruction of the Government, but we are entitled to know definitely and distinctly what it does propose, and all that it proposes, before we act at all.

When we grope in the dark we know not what we meet, and when we abdicate our own functions and power and put them into the hands of a committee, a creature of our own, which shuts its doors against us, and deliberates in secret, and only issues from time to time decrees for us to ratify or reject, it is our right, nay, sir, it is our duty to apprehend the worst, and to demand all the guarantees that full information can furnish for the safety of the trust we have committed to its hands.

I think we owe it to ourselves here upon this floor to emancipate ourselves from the domination of that committee. I think we owe it to ourselves here to discharge that committee from the further consideration of certain subjects we have assigned it, and take them where the Constitution has placed them, into our own keeping. Whether the House is prepared for such action, I do not know. I think for its own dignity it should become so as soon as possible.

We are told that we must admit none to the exercise of political power who are not sincere in their loyalty. Now, I have on that point this to submit: we have no means, in the first place, of testing the sincerity and loyalty of any man except by his public acts. What, moreover, have we to do with the motives of men North or South, or their opinions upon politics or anything else? I thought the day had gone by when opinions could be coerced by political power, or when Governments took cognizance of opinions at all, apart from public action. I thought that habit had expired when the Inquisition died. We have the right to exact at the hands of every man loyalty in his public action; and that is all we have the right to exact. You have the right to hold whatever opinions you like in regard to the Government if you will obey its laws and act with due allegiance to the Constitution and laws of the United States. That every man may be compelled to yield. What he may do is our concern; what he may believe or think is his, and his alone.

We have heard a great deal of the necessity of requiring irreversible guarantees from the southern States before we can restore them to political power. It is claimed we must have nothing less than an amendment to the Constitution on every point we may deem essential to the public good; and that to these amendments the southern States must consent as a condition precedent to readmission to the Union. On that point I wish to say that I believe we are seriously misled by reliance upon such amendments as guarantees for the future on any subject of vital importance. Take, for instance, the one which guaranties the non-assumption of the rebel debt and the non-repudiation of the national debt. That has been sent out by this House to the country as an amendment to the Constitution, and it is supposed that when it is ratified by the requisite number of States, the payment of our debt is perfectly and permanently secured. Now, sir, I do not believe that either with or without an amendment to the Constitution there is the slightest danger that one dollar of the rebel debt will ever be paid. It is not generally supposed that the people of the South have ever been over zealous touching the payment of their debts, and I see no reason to believe that the war has so increased their resources or their zeal in this behalf as need stir the patriotic apprehensions of Congress.

Now, sir, in regard to our own debt, suppose you put into the Constitution as an amendment a declaration, as broad as you like, and ratify it as often as you like, that this debt shall never be repudiated. Will that declaration pay it? You are to pay it, principal and interest, by voting taxes and in no other way; and when the tax bill is brought into the House, what man will be constrained in the least, as to the vote he will give upon it, by that particular clause of the Constitution of the United States? And if there are any here or elsewhere, or if there shall be in any future time, men on this floor who wish to avoid the obligation to pay the debt, either principal or interest, they will do it by voting not to levy the taxes that are absolutely requisite to its payment. And you cannot coerce the vote of a single man on that question by a constitutional amendment.

So, too, in regard to the right of secession. Suppose we put an amendment against that doctrine into the Constitution. The States North and South ratify it unanimously, if you please. It will be effectual so long as nobody wants to secede. When they do want to secede, they will override that prohibition just as they will override all the rest of the Constitution. There is nothing like a guarantee, nothing like security in it. Secession will always be, as it always has been, a question of will and of power. The Constitution cannot constrain the will, and if the power is there with the will, it matters little what the Constitution contains.

Mr. Speaker, we must bring ourselves to look upon this matter precisely as it is. We must not be deluded by words nor misled as to the one true and sole reliance for the payment of our debt, for the preservation of our Union, for the attainment of all the great objects which this nation was intended to accomplish, and which, we trust, it will yet achieve. We have just one thing and only one to rely on for them all. It is the same which has carried us through this long and arduous war. It is the patriotism of the people of the United States. It is their determination to maintain in the future, as they have maintained in the past, the integrity and the honor of their country. If they have it, and have enough of it to meet the emergencies as they arise, we shall go safely through. If they have it not, all the paper constitutions on the face of the earth could never either give it to them or supply its place.

So, sir, I put no great faith in these so-called guarantees of the Constitution for objects which can only rest upon the public conscienec and the public will. They divert our attention from the real nature of the task we have to perform, and lead us to rally on other agencies than those which alone can give us aid. We must still put faith in the people and in all the people. We must remember that public interest is after all the only guide of public conduct, and must learn that we best consult the safety and welfare of the nation when we promote the welfare and the prosperity of all its parts. We must cease to regard the people of the southern States as public enemies, and look upon them and treat them as identified necessarily with us in the fate and fortunes of this great Republic. It may be hard for us thus to recognize so soon as friends the men who have been in arms against us; but if we are to have any safety for the future, unless we are willing to convert our own Government into a despotism, and to perpetuate mutual hatred among its members for years, for generations to come, we must acknowledge the fact that the southern States are, and will remain forever, so long as the Union endures, essentially parts of our common country.

I have heard it said here that we are to hold these States as provincial dependencies. The gentleman from Ohio, [Mr. SHELLABARGER,] in the case he supposed, in case they should never give evidence of what he styles a sincere loyalty, avowed his willingness to hold them as provinces and dependencies forever! Has the gentleman seriously thought of the meaning which his words imply? Ten million people held by a republican Government, itself based on the principle that the only just foundation of government is the consent of the governed, as dependencies forever! Why, sir, there has been no such outrage perpetrated or contemplated for a thousand years in the history of nations. We are to send there agents to collect our taxes, and they must be collected at the point of the bayonet. We send there judges to hold courts, and armies to keep the people in subjection. I commend to the gentleman, and to every one who sympathizes in his views, to read in the Declaration of Independence the causes which were held then, and which will be held always and everywhere, to justify rebellion. They are precisely the things which must go with the policy covered by that proposition. I am not willing, by any such conduct, to sanctify the rebellion we have crushed. If we are to treat them hereafter in that way, we shall simply justify the course they have taken.

Mr. SHELLABARGER. Will the gentleman yield a moment?

Mr. RAYMOND. I suppose I must, as I involve myself in that necessity whenever I allude to the gentleman at all.

Mr. SHELLABARGER. There is no must about it; the gentleman has misapprehended me.

Mr. RAYMOND. I yield, sir.

Mr. SHELLABARGER. The gentleman has left out of my statement an extremely important part of it, and it was only in order to get that part in that I desired to suggest it. The part he left out is the word "general." What I said was this: that in the case supposed if there was not general and sincere loyalty (of course sincerity is to be judged by the main facts) then I would hold them as dependencies forever. I would now like the gentleman to favor me and this House by saying what he will do with them if they remain generally and sincerely disloyal.

Mr. RAYMOND. Well, sir, I do not admit the probability of it any more than he does, and even then I would not convert them into our slaves and subjects, because we should do ourselves tenfold more harm than we should them. There is no calamity which can overtake this Government so great as to infuse into its conduct despotic ideas, for ultimately those ideas will rule its action, and it will depend wholly on the accidents of political power on which section of the Union that despotism will take effect. It may take effect to-day on the southern States, but some party may, at some future time, come into power which will give it effect on New England and the western States. I would not have this Government converted into a despotism for its own sake. Moreover, I submit to the gentleman from Ohio and to all others, whether holding these States as provincial dependencies is the proper way to promote a sincere and general loyalty among their people. Something is due to human nature on that point as on every other. The lessons of history are full of warning and instruction upon it. Did Austria promote sincere loyalty by holding Italy and Hungary in subjection? No; disloyalty grew stronger and stronger with every day of her pressure, until finally she was forced to yield to it, in the one case by arms and in the other by concession, to save her own empire. And so it has been all through the world and all through history. Why, it seems to me that the dial of civilization must have gone backward two thousand years if we accept any such theory of national life and national conduct as this. Cannot we exercise as much clemency in this nineteenth century of the Christian era as Julius Cæsar exercised all through his civil war in Rome? His first act, after he had crushed his great opponent Pompey in a struggle of life and death, was to admit every one of his followers to an amnesty; the first thing he generally did after conquering a neighboring State was to admit its people to the full rights and privileges of citizenship in Rome.

Sir, I will not pursue this theme, although it is full of interest and instruction. But if we

cannot bring ourselves to act with magnanimity in dealing with a vanquished foe of our own race and country, if we cannot treat the southern people as members of this Union, admitting them to equal rights in this Republic, without degrading terms or doing aught to humiliate and destroy their pride and self-respect, then we may make up our minds that we are not equal to the crisis on which we have fallen. We shall fail in restoring peace, harmony, and prosperity to the Union. But the nation will not perish. Others will take our places who better appreciate the nature of the work that devolves upon us, and who will accomplish the end we fail to reach or even to comprehend. I think our danger here and now, lies in doing too much rather than too little. I think the relations of the Union are rapidly being restored. We must bear this in mind, that it does not depend altogether on our political action what shall be the future relations of the South with the North. Influences are at work to-day restoring friendly relations and harmony far more rapidly than any action we are likely to take can do. The great want of the southern people to-day is industry—to repair their losses, to renew their agriculture, to replace their implements of labor, to find capital to cultivate their lands, to plant cotton, and to start into activity and life, everything that enters into the prosperity of a free people. Restored commerce, "trade, the calm health of nations," will do more for them and for us than any laws we can place upon our statute-book. It is our duty, our duty to ourselves as well as to them, to aid them in these endeavors to build themselves up again, for by so doing do we but build up ourselves. We should do what we can to promote their prosperity; for, in so doing, we but promote our own. If we cannot do this, then we are not equal to the task we have undertaken, and must give place, sooner or later, to those who are.

And now, sir, let me submit in succinct form what I think it would be well for this House and this Government to do: and submitting it simply as an expression of my own views, I shall leave the whole question to the judgment of the House.

In the first place, I think we ought to accept the present *status* of the southern States, and regard them as having resumed, under the President's guidance and action, their functions of self-government in the Union.

In the second place, I think this House should decide on the admission of Representatives by districts, admitting none but loyal men who can take the oath we may prescribe, and holding all others as disqualified; the Senate acting, at its discretion, in the same way in regard to representatives of States.

I think in the third place, we should provide by law for giving to the freedmen of the South all the rights of citizens in courts of law and elsewhere.

In the fourth place, I would exclude from Federal office the leading actors in the conspiracy which led to the rebellion in every State.

In the fifth place, I would make such amendments to the Constitution as may seem wise to Congress and the States, acting freely and without coercion.

And sixth, I would take such measures and precautions by the disposition of military forces, as will preserve order and prevent the overthrow, by usurpation or otherwise, in any State, of its republican form of government.

And now, sir, I have only to thank the members of the House for the very great indulgence with which they have listened to my remarks. I may have erred in my opinions, for I have no overweening confidence in my own judgment on these high themes. But I can most truly say that I have spoken from a sincere desire to promote the peace and harmony of the Union we have preserved, and the permanent welfare of the country we have struggled so hard and so successfully to save. If I have said aught that is just and true, I beg that it may not be disparaged by anything I may have uttered that is untimely or unwise. Above all I beg this House to bear in mind, as the sentiment that should control and guide its action, that we of the North and they of the South are at war no longer. The gigantic contest is at an end. The courage and devotion on either side which made it so terrible and so long, no longer owe a divided duty, but have become the common property of the American name, the priceless possession of the American Republic through all time to come. The dead of the contending hosts sleep beneath the soil of a common country, and under one common flag. Their hostilities are hushed, and they are the dead of the nation forevermore. The victor may well exult in the victory he has achieved. Let it be our task, as it will be our highest glory, to make the vanquished, and their posterity to the latest generation, rejoice in their defeat.

1864

MR. RAYMOND'S VIEWS ON RECONSTRUCTION IN 1863.

The following extract from the speech referred to, made at Wilmington, November 6, 1863, will show how entirely unfounded was Mr. BROOMALL'S intimation that Mr. RAYMOND had but recently embraced the views he now holds on the subject of reconstruction. The speech was made in support of the Administration and a continued vigorous prosecution of the war, during the political canvass in the fall of 1863:

THE QUESTION OF RECONSTRUCTION.

But very many persons are checked in their inclination to support the war by distrust as to its practical result. Even in case of victory, they say, how do you propose to restore the Union? Suppose the rebellion is crushed, how will you bring back the people of the southern States to their allegiance? How do you propose to govern their territory, to put their State governments again in motion, and reconstruct the Union? These doubts and questionings disturb the judgments and affect the action of many very sincere and patriotic men; and this effect has been increased by the heated and untimely discussions of the subject, in which many prominent public men have seen fit to engage. The question of reconstruction cannot become a practical question until the rebellion is conquered. Until then we have nothing to reconstruct. I cannot help thinking, therefore, that it would have been wiser in these gentlemen, and quite as patriotic, to lend all their energies to the duty that lies most immediately and most distinctly before them, the vigorous prosecution of the war. They would have served the country quite as well if they had appealed to those great principles, those high aims, those noble and inspiring sentiments of love of country, love of Union, and love of the Constitution which all the people share in common, and thus sought to enlist them all in this great work of common duty and of common glory, instead of springing technical discussions on abstract points, sure to divide public sentiment, and therefore sure to check and cripple that common effort which the salvation of the country requires. But as the discussion has been started it will be pursued. And all we have to do is to keep it as clear from passion and prejudice as possible, to prevent it from degenerating into an exasperating party wrangle, and to let common sense have as fair play and as much influence as can be expected for it in heated political debates.

It has been urged, with ability and force, in some quarters that the rebel States, by seceding from the Union, have committed suicide; that their existence as States can no longer be recognized by the General Government, which, nevertheless, has jurisdiction of their soil, and can create upon it new local, territorial governments, in its own discretion; and that these governments thus created can become States only by permission of Congress, and enter the Union only on such conditions as Congress may prescribe. This theory has zealous advocates, and will have a party to support it in Congress and the country—a party held together not so much by any intellectual conviction of the soundness of the theory itself, as by the determination to use it as a basis for insisting that no rebel State shall come back into the Union except on condition of its abolishing slavery in its State constitution. The end aimed at may be desirable. I think it is; that is, I think it highly important, to their own welfare and for the interest of the whole country, that the States of the Union should all be free, and that slavery, which has been the cause of this rebellion, should never have power to foment another. But no wise man will permit his wishes on one point to control his actions on all. Still less will he adopt an elaborate theory of constitutional law in a matter affecting the permanent welfare of the nation, and deciding for all time to come the character of our institutions, for the sake of accomplishing any one purpose, even if that be so important a purpose as the abolition of slavery.

For my own part I do not find any support for this theory in the Constitution, or in what must be hereafter, as it has been heretofore, the constitutional relation of the several States to the American Union. It must be borne in mind that the Constitution has almost nothing to do with States as such. It imposes no affirmative obligation upon them. It does not depend upon them for the execution of its laws. It deals directly and exclusively with *individuals*. It makes a law, and it requires every individual within the scope of its authority to obey that law. That law is the supreme law of the land, "anything in the constitution or laws of any State to the contrary notwithstanding." It is this feature, which, more than any other, distinguishes the Constitution from the old Articles of Confederation. Under them the Congress made laws for *States* to execute. It called on the States for money, for men, for support of all kinds; and the States could give or refuse, could execute or annul, the laws of Congress at their sovereign pleasure. This was the weakness of that Government. It was this feature which made it necessary to "form a *more perfect* Union," and that was done by ordaining the present Constitution, which directs its laws to every individual citizen, and requires his obedience, no matter in what State he lives or what that State may say about it. It recognizes the States in this connection, as in every other, only to forbid their interference with its sovereignty within the defined limits of its own jurisdiction. When a State, therefore, comes into the Union, every individual inhabitant of that State becomes subject to the Government of the United States. It becomes his duty to obey its laws, and no State can release him from that duty. If he refuses and resists he commits a crime against the Government of the United States, and no State can release him from his individual responsibility for that crime or from its punishment. *No State can, therefore, possibly take any one of its citizens out from the jurisdiction of the national Government; still less can it take them all out.* In other words, no State can possibly secede. No individual in any State can sever his connection with the national Government, or absolve himself from the obligation to obey its laws, nor can *all* the citizens of any State, acting as individuals, as a State government, in convention or in any other form, release themselves or release anybody else, from the supreme obligation which rests upon them to obey the laws of the United States. Whatever individuals may do toward that end is a crime. Whatever States may do is a nullity. States, as such, cannot commit crimes. A crime is a viola-

tion of some positive obligation. The Constitution does not impose positive obligations upon States, but only upon their individual citizens. It is, therefore, the individual citizens of a State, and not the State, as such, that is to be punished for crimes committed against the United States, The State of South Carolina cannot be hung for treason, though every individual living in South Carolina may, and perhaps ought to be. [Laughter.] In its dealings with this rebellion, therefore, as in everything else, the Government deals exclusively with individuals, and not at all with States. Our armies are arrayed against the rebels, not against rebel States. When we come to inflict punishments for the crimes of the rebellion, we shall inflict them upon the individuals who have committed them, and not upon the States in which they live. One of the penalties of treason is disfranchisement; but that is a penalty to be inflicted, like all others, upon individual criminals, and not upon aggregates or communities or States. A State cannot be disfranchised any more than it can be hung, as a State, and in punishment of crime. For other reasons, and on other grounds, the Constitution has conferred upon each House of Congress the right to judge of the qualifications of its own members; and Congress may, therefore, exclude members from any rebel State, and may thus disfranchise that State in its discretion; but this is not designed as a provision for punishing crime, but as a just deference to the dignity of Congress, and as a necessary precaution against abuses. Nor would such exclusion and disfranchisement imply that the State was no longer in the Union. If the citizens of any State are bound to obey the *laws* of the Union, that State is *in* the Union. That obligation is the just, constitutional test. Now, will any man contend that the citizens of South Carolina, or any one of them, have been released, by their own act, by the act of that State, or in any other way, from their supreme obligation to obey all laws of the United States made in pursuance of the Constitution thereof? Certainly not. Then how can any man contend that South Carolina is not, in the eye of the Constitution, just as much in the Union as she ever was?

It is common to hear it said that the rebels, and all the rebel States, are "alien enemies," and must be treated as such. But if they are aliens, they owe us no allegiance; they are under no obligation to obey our laws, and we have no right to make war upon them for the purpose of compelling their obedience. Yet all concede that the *object* of the war is precisely that and nothing more, and that it will end when, and only when, they return to their allegiance. The whole war thus proceeds on the assumption that these men still rest under a supreme obligation of allegiance to the Constitution of the United States; that nothing has happened to release them from that obligation; that nothing which they or their States can do can possibly effect that release; and that until their independence as a distinct and separate nation is achieved and acknowledged, they will be bound to that allegiance. How, then, can they be regarded or treated as *aliens* in any sense? They are still citizens of the United States, offenders against its law, rebels against its authority, and therefore to be overcome in their rebellion, and to be punished for their crimes.

Now, these are the reasons which lead me to discard wholly the theory of State suicide. No State has any power to take itself or any one of its citizens from under the jurisdiction of the Government of the United States. Any act or ordinance which any State may pass for such a purpose is simply null and void. The obligation of obedience to the national law remains unimpaired, and with that obligation goes every right which the Constitution recognizes or confers. Every citizen of every State is entitled to-day to every civil right which he enjoyed before the rebellion broke out, unless he has forfeited it by some crime for which deprivation of his rights is the prescribed and acknowledged penalty; and in that case he can be restored to the enjoyment and exercise of his lost rights only by the remission of that penalty by the proper authority. But upon such remission he at once resumes them.

But, after all, I attach very little practical importance to these discussions. The great work of restoring the Union is not to be carried on upon such a basis. It is a practical work, in the hands of a practical people, and it will be prosecuted and perfected in a practical manner. Indeed it is already going on, and is bringing about from day to day its practical results. Without waiting for the close of our metaphysical debates as to the proper mode of reconstructing the Union, the Union is rapidly taking the liberty of reconstructing itself. [Laughter and applause.] Societies, it must be remembered, are not mechanical contrivances—they are living organisms. They have a law of growth and a power of growth quite independent of our systems and of our schemes. They take shape and form from the vital principles, the essential sentiments, interests, and impulses of their individual members, and this process we see is going on now in the rebel States every day. It has been said that even if we were to conquer the rebel States we could never convert their people into loyal citizens. But in spite of this plausible theory we see, as a matter of fact, that just as fast as the rebel armies are driven out of the rebel States the people of those States are not only willing but eager to return to their allegiance to the Constitution and put themselves again under protection of the national flag. It has been so in Maryland—it has been so in Missouri, in Tennessee, in Louisiana, in Mississippi. And see now what has been already accomplished. Of the actual States originally claimed and held by the confederacy, extending from Chesapeake bay to the Rio Grande, and from the Missouri and Ohio to the Atlantic and the Gulf, we already occupy and hold more than half. In other words half of the confederacy, territorially regarded, is already reclaimed and has been reconstructed into the Union; and what has been done with that half may be easily done with the other. More than one half the white population of all the original rebel States are at this moment living under the national flag. They have been brought back to their allegiance by the power of the Union arms; by the overthrow and defeat of the rebel forces, and by the consequent conviction in their minds that the rebel cause is lost, and that every consideration of their own welfare and that of their posterity requires them to abandon the rebellion and return to the Union. [Applause.] And if that has been accomplished with one half the population of the rebel confederacy, why, in the name of common sense, may it not also be done with the other? If one half their people have discovered that the rebellion is a failure, a ruinous and disastrous mistake, why may not the other half make the same discovery?

Now, in my opinion, just as fast as any rebel State is cleared of the rebel armies and held by the Union forces, the people of that State will desire to resume their allegiance to the national Constitution. They will desire to elect members of Congress; to reinstate their local Legislature, and resume the exercise of all their rights and functions as citizens of a State under the Constitution of the United States. It will be the duty of the Government to hold by military authority possession and control of every rebel State until its people can act freely and without dictation in this matter, and until it is satisfied that a fair proportion, if not an absolute majority of them, are disposed thus to act. Using its supreme authority, moreover, in the exercise of the war power, the Government will have a perfect right to require an oath of allegiance to the Federal Constitution as a condition of holding any State office or of voting for any officer, State or national. But I have no doubt that in every case where the people of a State may desire thus to resume their allegiance and their old relations to the Union the Government will deal with them in the most liberal and tolerant manner. In Mr. Seward's letter to the French Government, declining its offer of mediation, he had the President's authority for saying that their seats in both Houses of Congress awaited the arrival of Representatives from the rebel States whenever they might choose to send them; and in his letter to ex-Mayor Wood of New York, President Lincoln has declared that if the people of the rebel States should lay down their arms, and resume their allegiance to the Constitution, a *general amnesty* should not be withheld, if it were necessary to enable them to elect mem-

bers of Congress. We have thus the most full and explicit assurance of the desire and determination of the Government to aid the people of the rebel States in resuming their old relations to the national authority, whenever they shall lay down their arms and resume their allegiance to the Constitution. Now, suppose the initial steps in this direction to have been taken. Suppose the people of Louisiana, after proper evidence of their sincerity and unanimity, and upon compliance with such just conditions and precautions as the Government in the exercise of the war power may require, elect members of Congress, and send them to Washington. If they are admitted to their seats, that admission will settle the whole question of reconstruction so far as the State of Louisiana is concerned. And does any man doubt that they will be admitted? In spite of all the technical discussions of State rights and State suicide which are so fashionable, in spite of the earnest and universal desire that slavery may be abolished, we shall see, in my judgment, an overwhelming verdict of the people in every northern State, Massachusetts and Vermont not excepted, in favor of their admission. And the same thing will happen with every other rebel State as they may be successively cleared of the rebel troops, and may, one after another, seek to resume their old positions in the American Union. And thus, in my judgment, by a natural and regular process, slow possibly, but certainly sure in its operation, will the Union be restored and the supremacy of the Constitution reëstablished over the whole of the national domain. [Applause.]

Now, I am quite aware of the objections and the cavils to which a reconstruction of the Union on such a basis and by such a process as this is exposed. I know that men who have party interests to serve or personal feelings to gratify, men who have hobbies to ride or pet theories to establish; men who, with the best intentions in the world, think that the country can be saved only in their way and by their prescriptions, will regard this as altogether too prosaic a method of closing so grand and dramatic a chapter in the world's history as this rebellion, as quite beneath the dignity of the occasion and wholly unsuited to the issues and opportunities of the age. But practical statesmanship, we must remember, is at best a prosaic affair—almost as prosaic as war itself. The popular idea of a great general is that of a handsome man, in splendid uniform, on a prancing charger, witching the world with noble horsemanship, and pointing out to his multitudinous troops the paths of glory and the grave. The realty would show us a careworn man, descending to the minutest and humblest duties of the camp, living on the coarsest fare, exposed to the roughest weather, poring over maps, and cross-examining spies and deserters by night, and beset with a thousand cares which an hour's untimely storm or the misconduct of a single regiment may convert into the most bitter disappointment and the most lasting blight of all his hopes. So is it in practical politics. Common sense outweighs the most brilliant theories, and while the world admires and glorifies the latter it lives and is governed by the former.

Let me glance for a moment at some of the objections urged against such a solution of the pending problem. It has been said, and by no less an authority than Major General Butler, that if we thus regard all the States as still in the Union, we cannot elect a President, inasmuch as that requires a majority of *all* the electors. General Butler is mistaken. If he will consult the language of the Constitution he will find that it requires a majority only of "all the electors *appointed*," and if the rebel States do not appoint any electors, they will simply be left out of the reckoning altogether. If the election should go to the House, I admit, the result might be seriously affected, inasmuch as two thirds of *all the States* are required for a quorum. But that contingency is not likely to occur, and the possibility of it ought not, certainly, to control our action on the general issue.

But, it is said, if we allow the States thus to come back, the rebels will regain their power. They are still secessionists at *heart*, and will send again to Congress the same men who have brought this rebellion upon us. I do not think there is any danger of that result. I do not fear the reappearance in the national councils of the authors of this rebellion. John B. Floyd will never return to the Cabinet: one reason why he will not is that he is dead, and the other reasons, therefore, need not be mentioned. [Laughter.] Jefferson Davis and Mr. Mason and Robert Toombs might possibly attempt to return to the Senate; but they have been guilty of treason, and before they could resume their seats they would have to go through the troublesome and slightly damaging process of being hung. [Laughter.] I do not mean to say that they would not be quite as fit for those seats after being hung as before. I think they would; but as the Senate is the judge of the qualifications of its own members, they might have prejudices on the subject, and decline to admit them to their old fraternity. [Laughter and applause.] One great fact we must bear in mind in this connection. These men have been the political leaders of the southern States. They have induced the southern people to plunge into this rebellion. When it fails; when the great mass of the people in the southern States find themselves utterly ruined in fortune and in social standing; when they find themselves saddled with an enormous debt, discredited in the eyes of the world and humiliated in their own, do you suppose they will be likely to intrust their political fortunes longer to the men who, by false promises and for their own ends, have brought all this ruin and degradation upon them? *Their* rule is at an end. Their political influence and leadership are gone forever. Political power in the South will pass into new hands—not of a class, but of the great body of the southern people, of the men who live by their own labor, and not by the unpaid labor of slaves; and then we shall have a true democracy—one that rests on equal rights—at the South as we have had in the northern States. [Applause.] Beside this we have no right to insist upon any such adjustment, any such peace, as will secure the triumph of any political party or any political opinions. We seek to restore the Union. We have a right to insist that none but loyal men, none but men who will swear allegiance to the Constitution of the United States, shall have part or lot in the conduct of its affairs; but further than that we cannot go: We cannot insist upon any party test. We cannot require adhesion to any party platform, or to any specific opinions on any subject of legislative action, as a test of loyalty and a condition of exercising political rights. We cannot refuse representation in Congress to any State or section lest their Representatives should vote wrong. We have a right to require that every member and every voter should be in all his action a loyal man—a man pledged by his oath to uphold and maintain the Constitution of the United States. Until he breaks that oath he must be deemed loyal. For all the rest, for the character of the laws which Congress may enact, and the votes which its members may give, we must trust the intelligence and the wisdom of the people, working through the ordinary channels of political action.